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Apple v. Samsung: A Primer

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The jury verdict in the *Apple v. Samsung* case is in, and it is a whopper: $1.05 billion in damages, to be paid by Samsung to Apple for violating various intellectual property rights in the iPhone and iPad. In all likelihood, the court will follow that up with an order banning several Samsung products from the U.S. marketplace. So what is this case all about?

What Are Apple's Claims?

Apple had several different theories of infringement here, and the jury bought almost all of them, at least with regard to certain Samsung devices. Here are the theories that won Apple its case:

Utility patent infringement. Utility patents are what most people think of when they hear the word "patent" – a right to control a new, useful innovation. Three such innovations were at issue in *Apple v. Samsung*, all having to do with touch-screen technology. The first involved scrolling to the bottom of a document and seeing a gray area beyond where the document ends, which then disappears (bounces back) when you remove your finger. The second detected how many fingers touch the screen and then either scrolls or zooms accordingly. The thirdzoomed in on the exact column that the user indicates through a double-tap on the screen. The jury viewed all three patents as valid and found that Samsung had infringed them.

Design patent infringement. Design patents are a marriage of utility patents and copyrights, and it's not a particularly happy marriage. Like utility patents, design patents cover only innovative new designs. But unlike utility patents (and like copyrighted works) the design is valuable because it is aesthetically pleasing, as opposed to practically useful. Apple prevailed on one design patent claim that covered physical iPhone features like the speaker slot and display border, another that covered the iPhone's rounded corners and uniform bezel, and a third that applied to the Apple operating system's onscreen icons.

Trade dress dilution. Trade dress is a species of trademark, the law that governs brand names, logos, and other identifiers of a particular company's goods. With trade dress, however, it is the singular look and feel of the product that tells the consumer who makes it. The jury found that the trade dress of some Samsung products was so similar to the iPhone 3G's trade dress that Samsung diluted the singular quality of the Apple design.

What Are Samsung's Chances on Appeal?

It's difficult to convince an appellate court that a jury decided the facts wrong; jurors get a lot of deference as finders of fact. But Samsung can try, and it can also argue that the court gave the jury the wrong instructions, and that Apple's claims were so facially invalid that the case should not even have made it to a jury.

Samsung's chances of success on appeal are probably lowest when it comes to Apple's utility patents. The patents are hardly bulletproof, but none is self-evidently invalid, and the jury seems to have been properly instructed on how to evaluate both the patents and the alleged infringement.

The design patent claims are more likely to give Apple trouble on appeal. Design patents are rare and have not played a central role in cases of this magnitude, so they will receive significant scrutiny from the appellate court. One unexplored issue is the patents' breadth, because Samsung's devices are merely similar, not identical, to the Apple products. Samsung will also argue that Apple's designs are useful – *i.e.*, they help the devices work better – which means that they cannot be the subject of a design patent in the first place. (Useful designs must look to utility patents for protection.) For example, a silverware manufacturer might get a design patent in the purely ornamental pattern on its silverware, but a car manufacturer could not get a design patent in the aerodynamic shape of its new sports car. Several of the features of the iPhone design patents, like the device's rounded corners, seem functional rather than ornamental.

The trade dress claim may rise or fall based on the same considerations, for trade dress too is not protected if it is functionally useful. In addition, Apple's trade dress claim is not based on a classic "passing off" argument – *i.e.*,that consumers were fooled into thinking that the Samsung devices were Apple devices – but on a "dilution" argument. Dilution is a newer form of liability that has met with some skepticism in the appellate courts.

What Is Happening Elsewhere in the World?

The U.S. litigation is but one front in the worldwide war between the two companies, and Samsung has been faring better overseas. On the same day that the U.S. verdict came down, a South Korean court rejected several Apple claims and upheld some of Samsung's, suggesting that one lesson to be drawn is that home-court advantage matters in intellectual property cases. And a week later, a Japanese court gave Samsung another victory, albeit a small one, as it dismissed an Apple claim relating to synchronization technology. Related litigation is pending in Australia and Germany as well. But none of these foreign cases approaches the scale of the U.S. litigation – which got even bigger last week when Apple amended an earlier patent infringement lawsuit to include four newer Samsung products, including the popular Galaxy S III.

What Does This All Mean for the Electronics Market?

If the verdict survives appeal, the big winner (other than Apple itself) will be the companies that make handheld devices and interfaces that look nothing like Apple's – namely RIM (maker of Blackberry), Microsoft (whose relatively unpopular Windows Phone software suddenly looks a lot more attractive), and Nokia (which makes a lot of Windows-based phones). The biggest loser, aside from Samsung, may be Google and its Android operating system, which the Samsung devices used. The companies that use Android for phones and tablets will either have to "design around" the Apple patents or pay a licensing fee to Apple. And the latter option does away with one of Android's big advantages: it's free.

And consumers – do they win or lose? The answer depends on whether one thinks Apple needs these intellectual property rights as an incentive to innovate. Such rights impede competition, which means that they raise prices for consumers. So if Apple's rights here are of dubious merit, consumers will pay more for their electronics without any countervailing benefit in encouraging innovation (although the need to "design around" Apple's devices might itself lead to more innovation). But if the prospect of intellectual property rights was necessary to motivate Apple to develop these popular devices in the first place, then shelling out more for touchscreen devices is literally the price we pay for valuable advances in the electronics industry. In the end, then,

one's view of *Apple v. Samsung* probably reflects one's view of the merits of our intellectual property system in general.